

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

CHRISTOPHER HEIM,

Plaintiff,

vs.

JANE DOE, et al.,

Defendants.

**1:20-cv-00391-AWI-GSA-PC**

**ORDER DISMISSING SECOND AMENDED  
COMPLAINT FOR FAILURE TO STATE A  
CLAIM, WITH LEAVE TO AMEND  
(ECF No. 1.)**

**THIRTY-DAY DEADLINE TO FILE  
THIRD AMENDED COMPLAINT**

**I. BACKGROUND**

Christopher Heim ("Plaintiff") is a state prisoner proceeding *pro se* and *in forma pauperis* with this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this action on March 11, 2020. (ECF No. 1.) On May 14, 2020, Plaintiff filed the First Amended Complaint as a matter of course. (ECF No. 13.) On January 4, 2021, Plaintiff lodged a Second Amended Complaint, which was filed by the court on January 4, 2021. (ECF Nos. 16, 20.) Plaintiff's Second Amended Complaint is now before the court for screening. 28 U.S.C. § 1915.

**II. SCREENING REQUIREMENT**

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The

1 court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally  
 2 “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek  
 3 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).  
 4 “Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall  
 5 dismiss the case at any time if the court determines that the action or appeal fails to state a claim  
 6 upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

7 A complaint is required to contain “a short and plain statement of the claim showing that  
 8 the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not  
 9 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere  
 10 conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell  
 11 Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). While a plaintiff’s allegations are taken  
 12 as true, courts “are not required to indulge unwarranted inferences.” Doe I v. Wal-Mart Stores,  
 13 Inc., 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and citation omitted). To state  
 14 a viable claim, Plaintiff must set forth “sufficient factual matter, accepted as true, to ‘state a claim  
 15 to relief that is plausible on its face.’” Iqbal, 556 U.S. at 678-79; Moss v. U.S. Secret Service,  
 16 572 F.3d 962, 969 (9th Cir. 2009). While factual allegations are accepted as true, legal  
 17 conclusions are not. Id. The mere possibility of misconduct falls short of meeting this  
 18 plausibility standard. Id.

### 19 **III. SUMMARY OF SECOND AMENDED COMPLAINT**

20 Plaintiff is presently incarcerated at Mule Creek State Prison in Ione, California. The  
 21 events at issue in the Second Amended Complaint allegedly took place at Corcoran State Prison  
 22 (CSP) in Corcoran, California, when Plaintiff was incarcerated there in the custody of the  
 23 California Department of Corrections and Rehabilitation (CDCR). Plaintiff names as defendants  
 24 Correctional Officer Rodriguez (3B Corcoran Kitchen) and John Doe (Correctional Supervising  
 25 Cook, 3B Corcoran Kitchen) (collectively, “Defendants”).

26 Plaintiff’s allegations follow:

27 Plaintiff was assaulted on CSP Facility A, which resulted in him being transferred to CSP  
 28 Facility B, Level 4. Plaintiff was on orientation for two weeks before he received a job ducat for

the onsite 3B facility kitchen. He reported for work the next day for the morning shift. After they finished feeding the inmate population Plaintiff went into the back to put trays through the washer to clean them when he felt something hit him in the back of the head. Plaintiff was brutally attacked by multiple inmates, and the C/O's were nowhere in sight. Plaintiff was able to make it out to the front door leading to the dining hall. While he was there he saw the C/O's on their phones paying no attention at all instead of doing their jobs doing their rounds on a high-risk level floor. All of this could have been avoided by placing Plaintiff in administrative segregation and transferring him to another [omission] in line with his needs.

Plaintiff was taken by ambulance to Kaweah Delta Hospital where he received four staples on his upper forehead, four stitches on his nose, and three stitches on the right side of his forehead, resulting in psychological damage to his mind.

As relief, Plaintiff seeks \$50,000.00 for the psychological damage to his mind and the pain and suffering due to Defendants' inaction.

#### IV. PLAINTIFF'S CLAIMS

The Civil Rights Act under which this action was filed provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . . .

42 U.S.C. § 1983.

[Section] 1983 'is not itself a source of substantive rights,' but merely provides 'a method for vindicating federal rights elsewhere conferred.'" Graham v. Connor, 490 U.S. 386, 393-94 (1989) (quoting Baker v. McCollan, 443 U.S. 137, 144 n.3 (1979)); see also Chapman v. Houston Welfare Rights Org., 441 U.S. 600, 618 (1979); Hall v. City of Los Angeles, 697 F.3d 1059, 1068 (9th Cir. 2012); Crowley v. Nevada, 678 F.3d 730, 734 (9th Cir. 2012); Anderson v. Warner, 451 F.3d 1063, 1067 (9th Cir. 2006). "To the extent that the violation of a state law amounts to the deprivation of a state-created interest that reaches beyond that guaranteed by the federal Constitution, Section 1983 offers no redress." Id.

To state a claim under § 1983, a plaintiff must allege that (1) the defendant acted under color of state law and (2) the defendant deprived him or her of rights secured by the Constitution or federal law. Long v. County of Los Angeles, 442 F.3d 1178, 1185 (9th Cir. 2006); see also Marsh v. Cnty. of San Diego, 680 F.3d 1148, 1158 (9th Cir. 2012) (discussing “under color of state law”). A person deprives another of a constitutional right, “within the meaning of § 1983, ‘if he does an affirmative act, participates in another’s affirmative act, or omits to perform an act which he is legally required to do that causes the deprivation of which complaint is made.’” Preschooler II v. Clark Cnty. Sch. Bd. of Trs., 479 F.3d 1175, 1183 (9th Cir. 2007) (quoting Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978)). “The requisite causal connection may be established when an official sets in motion a ‘series of acts by others which the actor knows or reasonably should know would cause others to inflict’ constitutional harms.” Preschooler II, 479 F.3d at 1183 (quoting Johnson, 588 F.2d at 743). This standard of causation “closely resembles the standard ‘foreseeability’ formulation of proximate cause.” Arnold v. Int’l Bus. Mach. Corp., 637 F.2d 1350, 1355 (9th Cir. 1981); see also Harper v. City of Los Angeles, 533 F.3d 1010, 1026 (9th Cir. 2008).

**A. Personal Participation by Individual Defendants**

Under section 1983, Plaintiff must demonstrate how each named defendant *personally* participated in the deprivation of his rights. Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002) (emphasis added). Plaintiff must demonstrate, with facts, how each individual defendant, through his or her own individual actions, violated Plaintiff’s constitutional rights. Iqbal, 556 U.S. at 676-77.

In the Second Amended Complaint Plaintiff fails to allege facts showing that any of the named individual Defendants personally acted against him. Plaintiff fails to attribute any personal act to any Defendant. Plaintiff refers to “C/O’s” throughout the Second Amended Complaint and alleges that the “C/O’s” should have been making rounds instead of talking on their phones, but Plaintiff does not mention defendant Rodriguez or the John Doe defendant at all. Plaintiff cannot state a claim against a defendant unless he demonstrates in his allegations that each individual defendant, identified by name, personally acted or failed to act, violating

1 Plaintiff's rights. Plaintiff may not attribute liability to a group of defendants, but must "set forth  
2 specific facts as to each individual defendant's" deprivation of his rights. Leer v. Murphy, 844  
3 F.2d 628, 634 (9th Cir. 1988); see also Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989).

4 Plaintiff shall be granted leave to file a Third Amended Complaint addressing these  
5 issues. The court shall set forth the legal standards for an Eighth Amendment failure-to-protect  
6 claim in the following paragraph. Plaintiff is advised to review the legal standards before  
7 deciding which claims to bring in the Third Amended Complaint.

8 **B. Failure to Protect – Eighth Amendment Claim**

9 The Eighth Amendment protects prisoners from inhumane methods of punishment and  
10 from inhumane conditions of confinement. Morgan v. Morgensen, 465 F.3d 1041, 1045 (9th Cir.  
11 2006). Although prison conditions may be restrictive and harsh, prison officials must provide  
12 prisoners with food, clothing, shelter, sanitation, medical care, and personal safety. Farmer v.  
13 Brennan, 511 U.S. 825, 832-33 (1994) (internal citations and quotations omitted). Prison  
14 officials have a duty to take reasonable steps to protect inmates from physical abuse. Id. at 833;  
15 Hearns v. Terhune, 413 F.3d 1036, 1040 (9th Cir. 2005). The failure of prison officials to protect  
16 inmates from attacks by other inmates may rise to the level of an Eighth Amendment violation  
17 where prison officials know of and disregard a substantial risk of serious harm to the plaintiff.  
18 E.g., Farmer, 511 U.S. at 847; Hearns, 413 F.3d at 1040.

19 To establish a violation of this duty, the prisoner must establish that prison officials were  
20 "deliberately indifferent to a serious threat to the inmate's safety." Farmer, 511 U.S. at 834. The  
21 question under the Eighth Amendment is whether prison officials, acting with deliberate  
22 indifference, exposed a prisoner to a sufficiently "substantial risk of serious harm" to his future  
23 health. Id. at 843 (citing Helling v. McKinney, 509 U.S. 25, 35 (1993)). The Supreme Court has  
24 explained that "deliberate indifference entails something more than mere negligence . . . [but]  
25 something less than acts or omissions for the very purpose of causing harm or with the knowledge  
26 that harm will result." Farmer, 511 U.S. at 835. The Court defined this "deliberate indifference"  
27 standard as equal to "recklessness," in which "a person disregards a risk of harm of which he is  
28 aware." Id. at 836-37.

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2 The deliberate indifference standard involves both an objective and a subjective prong.  
 3 First, the alleged deprivation must be, in objective terms, “sufficiently serious.” Id. at 834.  
 4 Second, subjectively, the prison official must “know of and disregard an excessive risk to inmate  
 5 health or safety.” Id. at 837; Anderson v. County of Kern, 45 F.3d 1310, 1313 (9th Cir. 1995).  
 6 To prove knowledge of the risk, however, the prisoner may rely on circumstantial evidence; in  
 7 fact, the very obviousness of the risk may be sufficient to establish knowledge. Farmer, 511 U.S.  
 8 at 842; Wallis v. Baldwin, 70 F.3d 1074, 1077 (9th Cir. 1995).

9 Plaintiff fails to state a claim against any defendant for failure to protect him from the  
 10 attack by other inmates. Plaintiff has not alleged facts showing that any named defendant knew  
 11 Plaintiff was at substantial risk of serious harm and either ignored the risk or behaved  
 12 unreasonably when faced with the risk. Plaintiff shall be granted an opportunity to amend the  
 13 complaint to cure the deficiencies in this claim.

14 **C. Money Damages for Emotional Distress**

15 Plaintiff states in the Second Amended Complaint that he seeks \$50,000.00 from  
 16 Defendants for the psychological damage to his mind and the pain and suffering due to their  
 17 inaction. Plaintiff is advised that the Prison Litigation Reform Act provides that “[n]o Federal  
 18 civil action may be brought by a prisoner confined in jail, prison, or other correctional facility,  
 19 for mental and emotional injury suffered while in custody without a prior showing of physical  
 20 injury.” 42 U.S.C. § 1997e(e). The physical injury “need not be significant but must be more  
 21 than *de minimis*.” Oliver v. Keller, 289 F.3d 623, 627 (9th Cir. 2002) ) (back and leg pain and  
 22 canker sore *de minimis*); see also Pierce v. County of Orange, 526 F.3d 1190, 1211-13 (9th Cir.  
 23 2008) (bladder infections and bed sores, which pose significant pain and health risks to  
 24 paraplegics such as the plaintiff, were not *de minimis*). The physical injury requirement applies  
 25 only to claims for mental or emotional injuries and does not bar claims for compensatory,  
 26 nominal, or punitive damages. Id. at 630. Therefore, Plaintiff is not entitled to monetary  
 27 damages in this case for emotional distress unless he also shows a physical injury.

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2 **D. Doe Defendants**

3 Plaintiff names John Doe as a defendant in the Second Amended Complaint.  
 4 Unidentified, or “John Doe” defendants must be named or otherwise identified before service  
 5 can go forward. “As a general rule, the use of ‘John Doe’ to identify a defendant is not favored.”  
 6 Gillespie v. Civiletti, 629 F.2d 637, 642 (9th Cir. 1980). Plaintiff is advised that John Doe or  
 7 Jane Doe defendants cannot be served until Plaintiff has identified them as actual individuals and  
 8 amended his complaint to substitute names for John Doe or Jane Doe. For service to be  
 9 successful, the Marshal must be able to identify and locate defendants.

10 **V. CONCLUSION AND ORDER**

11 For the reasons set forth above, the court finds that Plaintiff fails to state any cognizable  
 12 claims in the Second Amended Complaint against any of the individual defendants. Under Rule  
 13 15(a) of the Federal Rules of Civil Procedure, “[t]he court should freely give leave to amend  
 14 when justice so requires.” Plaintiff shall be granted leave file a Third Amended Complaint within  
 15 thirty days. Noll v. Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987).

16 The amended complaint should be brief, Fed. R. Civ. P. 8(a), but must state what each  
 17 named defendant did that led to the deprivation of Plaintiff’s constitutional or other federal rights.  
 18 Iqbal, 556 U.S. at 678; Jones, 297 F.3d. at 934. Plaintiff must set forth “sufficient factual matter  
 19 . . . to ‘state a claim that is plausible on its face.’” Iqbal at 678 (quoting Twombly, 550 U.S. at  
 20 555). There is no *respondeat superior* liability, and each defendant is only liable for his or her  
 21 own misconduct. Iqbal, 556 U.S. at 677. Plaintiff must demonstrate that each defendant  
 22 *personally* participated in the deprivation of his rights. Jones, 297 F.3d at 934 (emphasis added).  
 23 Plaintiff should note that although he has been given the opportunity to amend, it is not for the  
 24 purpose of adding new defendants for unrelated issues. Plaintiff should also note that he has not  
 25 been granted leave to add allegations of events occurring after the initiation of this suit on March  
 26 11, 2020.

27 Plaintiff is advised that an amended complaint supersedes the original complaint, Lacey  
 28 v. Maricopa County, 693 F.3d 896, 907 n.1 (9th Cir. 2012), and it must be complete in itself

without reference to the prior or superseded pleading. Local Rule 220. Once an amended complaint is filed, the original complaint no longer serves any function in the case. Therefore, in an amended complaint, as in an original complaint, each claim and the involvement of each defendant must be sufficiently alleged. The amended complaint should be clearly and boldly titled "Third Amended Complaint," refer to the appropriate case number, and be an original signed under penalty of perjury.

Accordingly, **IT IS HEREBY ORDERED** that:

1. Based on the foregoing, the court finds that Plaintiff fails to state any cognizable claims in the Second Amended Complaint against any of the individual Defendants upon which relief may be granted under § 1983;
2. Plaintiff's Second Amended Complaint is dismissed for failure to state a claim, with leave to amend within **thirty (30) days** from the date of service of this order;
3. The Clerk's Office shall send Plaintiff a civil rights complaint form;
4. Plaintiff shall caption the amended complaint "Third Amended Complaint" and refer to the case number 1:20-cv-00391-AWI-GSA-PC; and
5. Plaintiff's failure to comply with this order shall result in a recommendation that this case be dismissed.

IT IS SO ORDERED.

Dated: **March 29, 2021**

**/s/ Gary S. Austin**  
UNITED STATES MAGISTRATE JUDGE